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August 4, 2008

**BY FACSIMILE**Hon. Colleen McMahon  
United States District Court  
United States Courthouse  
500 Pearl Street  
New York, New York 10007Re: **Moises Mendez v. Starwood Hotels & Resorts Worldwide, Inc.**  
**08-cv-4967 (CM) (KNF) (ECF Case)**

Dear Judge McMahon:

We represent Plaintiff Moises Mendez in the above-referenced action against his employer Defendant Starwood Hotels & Resorts Worldwide, Inc. ("Defendant" or "Starwood"). We write to respectfully request clarification from the Court regarding the status of the discovery deadlines identified in the proposed Case Management Plan (the "proposed Plan") that Starwood provided to the Court by facsimile on July 3, 2008 in accordance with Your Honor's Order of June 4, 2008.

As Your Honor may recall, Starwood's letter enclosing the proposed Plan also requested that the Court impose a stay of the proposed discovery deadlines pending the Court's determination of Starwood's motion to dismiss and compel arbitration under Fed. R. Civ. P. 12(b)(1).

By way of background to Starwood's submission of the proposed Plan and accompanying letter, we note that the parties conferred regarding the proposed discovery schedule on July 1, 2008. At that time, Plaintiff's counsel suggested that in light of Starwood's pending motion to dismiss and compel arbitration, it would be beneficial for the proposed Plan to identify relative discovery deadlines, measured in relation from the date when Starwood ultimately files its Answer to Plaintiff's Complaint. However, Starwood suggested that the parties could achieve the same result by identifying dates certain in the proposed Plan in combination with a request for a stay of those deadlines pending the Court's determination of Starwood's motion. Although we consented to this proposal, we advised Starwood that Plaintiff objected to the statements in its letter concerning the absence of potential prejudice to the parties. Nevertheless, Starwood insisted on sending the letter and would not accept any of Plaintiff's requested revisions.

8/5/08  
The Court will hold a Rule 16 conference on Sept 19, 2008. ~~which is~~ The Court will set a Case mgmt. Plan in place at that conference. The parties are encouraged to make progress in ~~the~~ discovery prior to the Rule 16 conf.

*Richard M. Mendez*

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However, the Court did not "so-order" the proposed Plan and, therefore, had no reason to consider the accompanying request for a stay. Furthermore, the Court subsequently issued an Order dated July 29, 2008, which denied Starwood's motion to dismiss and compel arbitration and directed the parties to appear for a 16(b) conference on September 19, 2008. It is therefore our understanding that the Court has not accepted the proposed Plan, and that the purpose of the scheduled 16(b) conference will be to establish governing discovery deadlines in this case.<sup>2</sup>

Prior to submitting this request for clarification to the Court, we requested, by letter dated and transmitted electronically on July 31, 2008, that Starwood confirm by August 1, 2008 whether it shares our understanding that the proposed Plan has not been adopted by the Court and that a governing discovery schedule will be established when the parties appear for a 16(b) conference on September 19, 2008. However, Starwood responded to our request by letter dated August 1, 2008, without providing us with such confirmation, and stated it would respond in due course.

Although we are reluctant to trouble the Court with this matter, we note that the proposed Plan provides that Plaintiff's deposition is to be taken by September 19, 2008 – the same date on which the parties are to appear before Your Honor for a 16(b) conference. Given this and other potential impending discovery deadlines, as well as Starwood's unwillingness to promptly clarify its position in response to our request, we respectfully request that the Court provide clarification for the parties regarding the status of the proposed Plan and our understanding that a governing discovery schedule will be established when the parties appear for a 16(b) conference on September 19, 2008.

Sincerely,



Kenneth P. Thompson

cc: Michael Starr, Esq.

<sup>2</sup> Our understanding that the Court has not accepted the proposed Plan also recognizes the fact that although Starwood has yet to file its Answer in this case, two months – out of the proposed discovery period of only six months duration – have already elapsed. Adherence to the proposed Plan under these circumstances would consequently require, among other things, that Plaintiff produce his responses to Starwood's discovery demands before Plaintiff has had an opportunity to serve Starwood with discovery demands that are appropriately tailored to the allegations and affirmative defenses that may be set forth in Starwood's as yet unfilled Answer.